



Bill Analysis

Author: Robert Rivas

Sponsor:

Bill Number: AB1654

Related Bills: See Legislative
History

Amended: August 11, 2022,
and August 24, 2022

SUBJECT

Low-Income Housing Credit/Farmworker Housing

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), modify the Low-Income Housing Credit (LIHC).

This bill would also add a provision to the Health and Safety Code (HSC) requiring a study of farmworker housing issues and modify the LIHC under the Insurance Tax Law.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The August 11, 2022, amendments modified the criteria for the return of unallocated credits related to farmworker housing projects.

The August 24, 2022, amendments modified provisions applicable to the farmworker housing study and added double-jointing language to address chaptering issues in the event that both this bill and AB 1288 (Quirk-Silva) pass.

Both amendments made other nonsubstantive and technical changes.

REASON FOR THE BILL

The reason for this bill is to provide that a portion of the LIHC allocation is specifically for farmworker housing.

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ANALYSIS

This bill, under the PITL and the CTL, would, for calendar years 2024 through 2034, require that the lesser of \$25,000,000 or 5% of the amount available per calendar year as allocated by the California Tax Credit Allocation Committee (Allocation Committee) is to be set aside for projects to provide farmworker housing, as defined under the HSC. These credits would be administered consistent with other credits allocated under the LIHC to provide farmworker housing.

This bill would require that any credits set aside for farmworker housing remaining unallocated after the conclusion of a funding round would roll over to consecutive subsequent funding rounds in that calendar year. However, any credits that remain unallocated prior to the final funding round in that calendar year would be added back to the aggregate amount of credits that may be allocated.

This bill would require that for calendar year 2035 and after, a portion of the allocation would be required to be set aside for farmworker housing. The amount would be determined by the Legislature upon consideration of the comprehensive strategy, or most recent update, provided by the Department of Housing and Community Development pursuant to the HSC.

This bill includes double-jointing language to incorporate changes proposed to be added by AB 1288 (Rivas) to prevent chaptering issues if both bills are enacted.

Effective/Operative Date

This bill would be effective and operative on January 1, 2023.

Section 6 of this bill provides that Sections 3.5, 4.5, and 5.5 of this bill would only become operative, if all of the following occur:

- 1) Both bills (AB 1288 and AB 1654) are enacted and become effective on or before January 1, 2023,
- 2) Each bill amends Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, and
- 3) This bill is enacted after AB 1288 in which case Sections 3, 4, and 5 of this bill shall not become operative.

Federal/State Law

Current federal tax law allows a LIHC for the costs of constructing, rehabilitating, or acquiring low-income housing. The LIHC amount varies depending on several factors including when the housing was placed in service and whether it was federally subsidized; and varies between 30% and 70% of the present value of the qualified low-income housing. The LIHC is claimed over ten years.

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The Allocation Committee allocates and administers the federal and state LIHC Programs.

Current state tax law generally conforms to federal law with respect to the LIHC, except that the state LIHC is claimed over four taxable years, is limited to projects located in California, must be allocated and authorized by the Allocation Committee, rents must be maintained at low-income levels for 30 years, and the Allocation Committee must have authorized a federal credit to the taxpayer or the taxpayer must qualify for the federal credit. The LIHC is allocated in amounts equal to the sum of all the following:

- 1) \$100 million,
- 2) The unused housing credit ceiling, if any, for the preceding calendar years,
- 3) The amount of housing credit ceiling returned in the calendar year, and
- 4) \$500,000 allocated to farmworker housing.

Beginning in 2020, an additional \$500,000,000 may be allocated to specified low-income housing projects. For calendar years beginning in 2021 and thereafter, an annual amount up to \$500,000,000 may be available for allocation pursuant to an authorization in the annual Budget Act or related legislation and specified regulatory action by the Allocation Committee.

For taxable years beginning on or after January 1, 2020, there is no limitation on passive activity losses.

The Allocation Committee certifies the amount of LIHC allocated. In the case of a partnership or an S Corporation, a copy of the certificate is provided to each taxpayer. The taxpayer is required, upon request, to provide a copy of the certificate to the Franchise Tax Board (FTB). The allocation of the LIHC to partners must be based upon the partnership agreement, regardless of how the federal LIHC is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, as specified.

Any unused credit may continue to be carried forward until the credit is exhausted.

For taxable years beginning on or after January 1, 2019, a taxpayer may elect in its application to the Allocation Committee to sell all or a portion of any LIHC allowed to one or more unrelated parties for each taxable year in which the LIHC is allowed, as specified in the provisions administered by the Allocation Committee.

The Allocation Committee is required to enter into an agreement with the FTB to pay any costs incurred by the FTB to administer this credit.

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For taxable years beginning on or after January 1, 2022, the requirements for “at risk of conversion” projects were updated and expanded to include adaptive reuse projects.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 1288 (Quirk-Silva, 2021/2022) would, LIHC provisions of the PITL and CTL, allow a taxpayer who purchased a credit to be eligible to claim any such credit in the taxable year the building is placed in service and would identify certain taxpayer certification requirements. AB 1288 has passed both chambers and is currently enrolled.

AB 447 (Grayson, Chapter 344, Statutes of 2021) expanded the eligibility criteria for buildings that are at risk of conversion for the allocation of LIHTC by the Allocation Committee. This bill also expanded allocations for eligible projects of new buildings to include retrofitting and repurposing of existing nonresidential structures.

AB 101 (Committee on the Budget, Chapter 159, Statutes of 2019) among other things, under the PITL and the CTL, modified the LIHC.

AB 10 (Chiu, et al., 2019/2020) would have, for purposes of the additional \$500,000,000 LIHC allocation for calendar year 2021 and thereafter, modified recently enacted law by removing the requirement for authorization of the additional allocation amount in the annual Budget Act or related legislation. AB 10 did not pass out of the Senate Committee on Appropriations by the constitutional deadline.

SB 9 (Chiu, 2019/2020) would have allowed in perpetuity the sale of the LIHC and allocations of the LIHC to partners without regard to the substantial economic effect rules by eliminating the sunset on those provisions. SB 9 did not pass out of the Assembly Committee on Appropriations by the constitutional deadline.

AB 571 (Garcia, Chapter 372, Statutes of 2017) made changes to the farmworker housing tax credit set-aside within the LIHC program.

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PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

This bill would not significantly impact the department’s costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impact:

Estimated Revenue Impact of AB 1654 Amended August 24, 2022
Assumed Enactment after June 30, 2022

(\$ in Millions)

Fiscal Year	Revenue
2022-2023	\$0
2023-2024	\$0
2024-2025	\$0
2025-2026	\$0
2026-2027	+\$1.9

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

This bill as amended August 24, 2022, would require the Allocation Committee to set aside the lesser of 5% or \$25 million of the allocation amount available in that year for Farmworker housing projects.

According to information provided by the Allocation Committee, Farmworker housing projects are largely under allocated and there is \$4.2 million awaiting allocation. Due to the infrequent allocation to Farmworkers housing projects, the \$25 million set aside was modeled as a three-year lag and was added back at the end of that period. For example, \$25 million would be set aside in taxable year 2025, and then added back to the allocation amounts available in the 2025 taxable year.

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The one-year lag in allocations along with the timing of the building being placed in service in order to claim the credit, results in a revenue gain of \$1.9 million beginning in fiscal year 2026-2027, peaking at \$4.2 million in fiscal year 2029-2030. It is estimated that the revenue gain would decrease until approximately fiscal year 2032-2033, when the amount of credit claimed would exceed the impact of the amount set aside for Farmworker house projects. The overall timing of revenue impact is expected to be zero, as the revenue gain in the early years will be offset by the revenue loss in the out years.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

As per the August 26, 2022, Senate Floor Analysis of AB 1654, the following organizations support this bill.

Support

California Coalition for Rural Housing (co-source)
California Rural Legal Assistance Foundation (co-source)
Burbank Housing
Cabrillo Economic Development Corporation
California Housing Partnership Corporation
City of San Juan Bautista
Community Housing Improvement Program
County of Monterey
County of Riverside
Housing California
Mutual Housing California
People's Self-help Housing Corporation
Public Interest Law Project
Rural Community Assistance Corporation
San Joaquin Valley Housing Collaborative
Self Help Enterprises
Sierra Business Council
Valley Restart Shelter

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Opposition

None on file.

ARGUMENTS

None on file.

LEGISLATIVE CONTACT

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